



International
Civil Aviation
Organization

Organisation
de l'aviation civile
internationale

Organización
de Aviación Civil
Internacional

Международная
организация
гражданской
авиации

منظمة الطيران
المدني الدولي

国际民用
航空组织

Tel.: +1 (514) 954-8219 ext. 6711

Ref.: AN 13/13.1-06/32

24 March 2006

Subject: Adoption of Amendment 44 to Annex 11

Action Required: a) Notify any disapproval before
17 July 2006; b) Notify any differences and compliance
before 23 October 2006

Sir/Madam,

1. I have the honour to inform you that Amendment 44 to the *International Standards and Recommended Practices, Air Traffic Services* (Annex 11 to the Convention on International Civil Aviation) was adopted by the Council at the twelfth meeting of its 177th Session on 14 March 2006. Copies of the Amendment and the Resolution of Adoption are being sent to you under separate cover.
2. When adopting the amendment, the Council prescribed 17 July 2006 as the date on which it will become effective, except for any part concerning which a majority of Contracting States have registered their disapproval before that date. In addition, the Council resolved that Amendment 44, to the extent it becomes effective, will be applicable on 23 November 2006.
3. Amendment 44 arises from follow-up action to the 35th Session of the ICAO Assembly; Recommendation 2/1 of the Eleventh Air Navigation Conference; and a review of safety recommendations issued by the German Federal Bureau of Aircraft Accidents Investigation (BFU) in their final report subsequent to the mid-air collision near Überlingen, Germany on 1 July 2002. The subjects are given in the amendment to the Foreword of Annex 11, Thirteenth Edition, a copy of which is in Attachment A.
4. The amendment introduces:
 - a) new and revised standards, as well as guidance material on the concept of acceptable level of safety, to harmonize safety management requirements in Annexes 6 — *Operation of Aircraft*, 11 — *Air Traffic Services* and 14 — *Aerodromes*, in response to the need to complement the prevailing approach to the management of safety based upon regulatory compliance with a performance-based approach; and

- b) a recommended practice that air traffic control units be equipped with devices that record background communication and the aural environment at air traffic controller work stations, which may offer additional information to the accident investigation authority.

5. In accordance with the decision of the 26th Session of the Assembly, I would like to bring to your attention the Organization's long-standing practice of providing documentation to States upon request. In this regard, I wish to refer you to the ICAO-NET website (www.icao.int/icaonet) where you can access all relevant documentation. The practice of dispatching printed copies of such documentation has now been discontinued.

6. In conformity with the Resolution of Adoption, may I request:

- a) that before 17 July 2006 you inform me if there is any part of Amendment 44, concerning which your Government wishes to register disapproval, using the form in Attachment C for this purpose. Please note that only statements of disapproval need be registered and if you do not reply it will be assumed that you do not disapprove of the amendment;
- b) that before 23 October 2006 you inform me of the following, using the form in Attachment D for this purpose:
 - 1) any differences that will exist on 23 November 2006 between the national regulations or practices of your Government and the provisions of the whole of Annex 11, as amended by all amendments up to and including Amendment 44, and thereafter of any further differences that may arise;
 - 2) the date or dates by which your Government will have complied with the provisions of the whole of Annex 11, as amended by all amendments up to and including Amendment 44.

7. With reference to the request in paragraph 6 a) above, it should be noted that a registration of disapproval of Amendment 44 or any part of it in accordance with Article 90 of the Convention does not constitute a notification of differences under Article 38 of the Convention. To comply with the latter provision, a separate statement is necessary if any differences do exist, as requested in paragraph 6 b) 1). It is recalled in this respect that international Standards in Annexes have a conditional binding force, to the extent that the State or States concerned have not notified any difference thereto under Article 38 of the Convention.


8. Guidance on the determination and reporting of differences is given in the Note on the Notification of Differences in Attachment B.

9. Please note that a detailed repetition of previously notified differences, if they continue to apply, may be avoided by stating the current validity of such differences.

10. I would appreciate it if you would also send a copy of your notifications, referred to in paragraph 6 b) above, to the ICAO Regional Director accredited to your Government.

11. As soon as practicable after the amendment becomes effective, on 17 July 2006, replacement pages incorporating Amendment 44 will be forwarded to you.

Accept, Sir/Madam, the assurances of my highest consideration.



Taïeb Chérif
Secretary General

Enclosures:

- A — Amendment to the Foreword of Annex 11
- B — Note on the Notification of Differences
- C — Form on notification of disapproval of all or part of Amendment 44 to Annex 11
- D — Form on notification of compliance with or differences from Annex 11

Under separate cover:

Copy of Amendment 44 to Annex 11 with the associated Resolution of Adoption (to be dispatched on or about 24 March 2006)

ATTACHMENT A to State letter AN 13/13.1-06/32

AMENDMENT TO THE FOREWORD OF ANNEX 11, THIRTEENTH EDITION

Add the following at the end of Table A (page xii):

<i>Amendment</i>	<i>Source(s)</i>	<i>Subject</i>	<i>Adopted/Approved Effective Applicable</i>
44	35th Session of the Assembly Eleventh Air Navigation Conference Air Navigation Commission	ATS safety management; recording devices.	14 March 2006 17 July 2006 23 November 2006

**NOTE ON THE NOTIFICATION OF DIFFERENCES TO ANNEX 11
AND FORM OF NOTIFICATION**

(Prepared and issued in accordance with instructions of the Council)

1. *Introduction*

1.1 The Assembly and the Council, when reviewing the notification of differences by States in compliance with Article 38 of the Convention, have repeatedly noted that the state of such reporting is not entirely satisfactory.

1.2 With a view to achieving a more comprehensive coverage, this note is issued to facilitate the determination and reporting of such differences and to state the primary purpose of such reporting.

1.3 The primary purpose of reporting of differences is to promote safety and efficiency in air navigation by ensuring that governmental and other agencies, including operators and service providers, concerned with international civil aviation are made aware of all national regulations and practices in so far as they differ from those prescribed in the ICAO Standards.

1.4 Contracting States are, therefore, requested to give particular attention to the notification before 23 October 2006 of differences with respect to Standards in Annex 11. The Council has also urged Contracting States to extend the above considerations to Recommended Practices.

1.5 Contracting States are asked to note further that it is necessary to make an explicit statement of intent to comply where such intent exists, or where such is not the intent, of the difference or differences that will exist. This statement should be made not only to the latest amendment but to the whole Annex, including the amendment.

1.6 If previous notifications have been made in respect of this Annex, detailed repetition may be avoided, if appropriate, by stating the current validity of the earlier notification. States are requested to provide updates of the differences previously notified after each amendment, as appropriate, until the difference no longer exists.

2. *Notification of differences to Annex 11 including Amendment 44*

2.1 Past experience has indicated that the reporting of differences to Annex 11 has in some instances been too extensive since some appear merely to be a different manner of expressing the same intent.

2.2 Guidance to Contracting States in the reporting of differences to Annex 11 can only be given in very general terms. Where the national regulations of States call for compliance with procedures that are not identical but essentially similar to those contained in the Annex, no difference should be reported since the details of the procedures existing are the subject of notification through the medium of aeronautical information publications. Although differences to Recommended Practices are not notifiable

under Article 38 of the Convention, Contracting States are urged to notify the Organization of the differences between their national regulations and practices and any corresponding Recommended Practices contained in an Annex. States should categorize each difference notified on the basis of whether the corresponding national regulation is:

- a) ***More exacting or exceeds the ICAO Standard or Recommended Practice (SARP) (Category A)***. This category applies when the national regulation is more demanding than the corresponding SARP, or imposes an obligation within the scope of the Annex which is not covered by a SARP. This is of particular importance where a State requires a higher standard which affects the operation of aircraft of other Contracting States in and above its territory;
- b) ***Different in character or other means of compliance (Category B)****. This category applies when the national regulation is different in character from the corresponding ICAO SARP, or when the national regulation differs in principle, type or system from the corresponding SARP, without necessarily imposing an additional obligation; and
- c) ***Less protective or partially implemented/not implemented (Category C)***. This category applies when the national regulation is less protective than the corresponding SARP; or when no national regulation has been promulgated to address the corresponding SARP, in whole or in part.

2.3 When a Contracting State deems an ICAO Standard concerning aircraft, operations, equipment, personnel, or air navigation facilities or services to be not applicable to the existing aviation activities of the State, notification of a difference is not required. For example, a Contracting State that is not a State of Design or Manufacture and that does not have any national regulations on the subject, would not be required to notify differences to Annex 8 provisions related to the design and construction of an aircraft.

2.4 For States that have already fully reported differences from Annex 11 or have reported that no differences exist, the reporting of any further differences occasioned by the amendment should be relatively straightforward; however, attention is called to paragraph 1.5 wherein it is indicated that this statement should be made not only to the latest amendment but to the whole Annex, including the amendment.

3. *Form of notification of differences*

3.1 Differences should be notified in the following form:

- a) ***Reference***: The number of the paragraph or subparagraph in Annex 11 as amended which contains the Standard or Recommended Practice to which the difference relates;
- b) ***Category***: Indicate the category of the difference as A, B or C in accordance with paragraph 2.4 above.

* The expression “different in character or other means of compliance” in b) would be applied to a national regulation which achieves, by other means, the same objective as that of the corresponding ICAO SARPs and so cannot be classified under a) or c).

- c) *Description of the difference:* Clearly and concisely describe the difference and its effect;
- d) *Remarks:* Under “Remarks” indicate reasons for the difference and intentions including any planned date for implementation.

3.2 The differences notified will be recorded in a Supplement to the Annex, normally in the terms used by the Contracting State when making the notification. In the interest of making the supplement as useful as possible, please make statements as clear and concise as possible and confine remarks to essential points. Comments on implementation, in accordance with paragraph 4 b) 2) of the Resolution of Adoption, should not be combined with those concerning differences. The provision of extracts from national regulations cannot be considered as sufficient to satisfy the obligation to notify differences. General comments that do not relate to specific differences will not be published in Supplements.

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ATTACHMENT C to State letter AN 13/13.1-06/32

NOTIFICATION OF DISAPPROVAL OF ALL OR PART OF
AMENDMENT 44 TO ANNEX 11

To: The Secretary General
International Civil Aviation Organization
999 University Street
Montreal, Quebec
Canada H3C 5H7

(State) _____ hereby wishes to disapprove the following
parts of Amendment 44 to Annex 11:

Signature _____

Date _____

NOTES

- 1) If you wish to disapprove all or part of Amendment 44 to Annex 11, please dispatch this notification of disapproval to reach ICAO Headquarters by 17 July 2006. If it has not been received by that date it will be assumed that you do not disapprove of the amendment. **If you approve of all parts of Amendment 44, it is not necessary to return this notification of disapproval.**
- 2) This notification should not be considered a notification of compliance with or differences from Annex 11. Separate notifications on this are necessary. (See Attachment D.)
- 3) Please use extra sheets as required.

ATTACHMENT D to State letter AN 13/13.1-06/32

**NOTIFICATION OF COMPLIANCE WITH OR DIFFERENCES FROM
ANNEX 11
(including all amendments up to and including Amendment 44)**

To: The Secretary General
International Civil Aviation Organization
999 University Street
Montreal, Quebec
Canada H3C 5H7

1. No differences will exist on _____ between the national regulations and/or practices of **(State)** _____ and the provisions of Annex 11, including all amendments up to and including Amendment 44.

2. The following differences will exist on _____ between the regulations and/or practices of **(State)** _____ and the provisions of Annex 11, including Amendment 44 (Please see Note 3) below.)

a) Annex Provision	b) Difference Category	c) Details of Difference	d) Remarks
(Please give exact paragraph reference)	(Please indicate A, B, or C)	(Please describe the difference clearly and concisely)	(Please indicate reasons for the difference)

(Please use extra sheets as required)

3. By the dates indicated below, **(State)** _____ will have complied with the provisions of Annex 11, including all amendments up to and including Amendment 44 for which differences have been notified in 2 above.

a) Annex Provision (Please give exact paragraph reference)	b) Date	c) Comments
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(Please use extra sheets as required)

Signature _____

Date _____

NOTES

- 1) If paragraph 1 above is applicable to you, please complete paragraph 1 and return this form to ICAO Headquarters. If paragraph 2 is applicable to you, please complete paragraphs 2 and 3 and return the form to ICAO Headquarters.
- 2) Please dispatch the form to reach ICAO Headquarters by 23 October 2006.
- 3) A detailed repetition of previously notified differences, if they continue to apply, may be avoided by stating the current validity of such differences.
- 4) Guidance on the notification of differences from Annex 11 is provided in the Note on the Notification of Differences in Attachment B.
- 5) Please send a copy of this notification to the ICAO Regional Director accredited to your Government.

— END —

AMENDMENT No. 44

TO THE

**INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES**

AIR TRAFFIC SERVICES

ANNEX 11

TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

The amendment to Annex 11 contained in this document was adopted by the Council of ICAO on **14 March 2006**. Such parts of this amendment as have not been disapproved by more than half of the total number of Contracting States on or before **17 July 2006** will become effective on that date and will become applicable on **23 November 2006** as specified in the Resolution of Adoption.

MARCH 2006

INTERNATIONAL CIVIL AVIATION ORGANIZATION

**AMENDMENT 44 TO THE INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES**

AIR TRAFFIC SERVICES

RESOLUTION OF ADOPTION

The Council

Acting in accordance with the Convention on International Civil Aviation, and particularly with the provisions of Articles 37, 54 and 90 thereof,

1. *Hereby adopts* on 14 March 2006 Amendment 44 to the International Standards and Recommended Practices contained in the document entitled *International Standards and Recommended Practices*, Annex 11 — *Air Traffic Services* which for convenience is designated Annex 11 to the Convention;
2. *Prescribes* 17 July 2006 as the date upon which the said amendment shall become effective, except for any part thereof in respect of which a majority of the Contracting States have registered their disapproval with the Council before that date;
3. *Resolves* that the said amendment or such parts thereof as have become effective shall become applicable on 23 November 2006;
4. *Requests the Secretary General:*
 - a) to notify each Contracting State immediately of the above action and immediately after 17 July 2006 of those parts of the amendment which have become effective;
 - b) to request each Contracting State:
 - 1) to notify the Organization (in accordance with the obligation imposed by Article 38 of the Convention) of the differences that will exist on 23 November 2006 between its national regulations or practices and the provisions of the Standards in the Annex as hereby amended, such notification to be made before 23 October 2006, and thereafter to notify the Organization of any further differences that arise;
 - 2) to notify the Organization before 23 October 2006 of the date or dates by which it will have complied with the provisions of the Standards in the Annex as hereby amended;
 - c) to invite each Contracting State to notify additionally any differences between its own practices and those established by the Recommended Practices, when the notification of such differences is important for the safety of air navigation, following the procedure specified in subparagraph b) above with respect to differences from Standards.

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NOTES ON THE PRESENTATION OF THE AMENDMENT TO ANNEX 11

The text of the amendment is arranged to show deleted text with a line through it and new text highlighted with grey shading, as shown below:

1. ~~Text to be deleted is shown with a line through it.~~ text to be deleted
2. **New text to be inserted is highlighted with grey shading.** new text to be inserted
3. ~~Text to be deleted is shown with a line through it~~ followed by the replacement text which is highlighted with grey shading. new text to replace existing text

**TEXT OF AMENDMENT 44 TO INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES
AIR TRAFFIC SERVICES**

**ANNEX 11
TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION**

...

CHAPTER 1. DEFINITIONS

...

Safety programme. An integrated set of regulations and activities aimed at improving safety.

Safety management system. A systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies and procedures.

...

CHAPTER 2. GENERAL

...

2.26 ~~ATS~~ Safety management

2.26.1 States shall ~~implement systematic and appropriate~~ establish a ~~ATS safety management~~ programmes, ~~to ensure that safety is maintained~~ in order to achieve an acceptable level of safety in the provision of ATS within airspaces and at aerodromes.

2.26.2 ~~The acceptable level of safety and safety objectives applicable to the provision of ATS within airspaces and at aerodromes shall be established by the State or States concerned. When applicable, safety levels and safety objectives shall be established on the basis of regional air navigation agreements~~ The acceptable level of safety to be achieved shall be established by the State(s) concerned.

~~Note.— The acceptable level of safety may be specified in qualitative or quantitative terms. The following are examples of measures which could be used to express the acceptable level of safety:~~

~~a) — a maximum probability of an undesirable event, such as collision, loss of separation or runway incursion;~~

~~b) — a maximum number of accidents per flight hour;~~

~~c) — a maximum number of incidents per aircraft movement;~~

~~d) — a maximum number of valid short term conflict alerts (STCA) per aircraft movement.~~

~~Note.— Guidance on safety programmes and on defining acceptable levels of safety is contained in Attachment E and the ICAO Safety Management Manual (Doc 9859).~~

2.26.3 An ~~ATS safety management programme~~ States shall require, as part of their safety

programme, that an air traffic services provider implements a safety management system acceptable to the State that, ~~inter alia~~ as a minimum:

- a) identifies ~~actual and potential~~ safety hazards ~~and determine the need for remedial action~~;
- b) ensures that remedial action necessary to maintain an acceptable level of safety is implemented; ~~and~~
- c) provides for continuous monitoring and regular assessment of the safety level achieved; ~~and~~
- d) aims to make continuous improvement to the overall level of safety.

2.26.4 A safety management system shall clearly define lines of safety accountability throughout the air traffic services provider, including a direct accountability for safety on the part of senior management.

Note.— Guidance on safety management systems is contained in the ICAO Safety Management Manual (Doc 9859), and associated procedures are contained in the PANS-ATM (Doc 4444).

~~2.26.4~~ 2.26.5 Any significant safety-related change to the ATS system, including the implementation of a reduced separation minimum or a new procedure, shall only be effected after a safety assessment has demonstrated that an acceptable level of safety will be met and users have been consulted. When appropriate, the responsible authority shall ensure that adequate provision is made for post-implementation monitoring to verify that the defined level of safety continues to be met.

Note 4.— When, due to the nature of the change, the acceptable level of safety cannot be expressed in quantitative terms, the safety assessment may rely on operational judgment.

Note 2.— ~~Attention is drawn to guidance material contained in the Air Traffic Services Planning Manual (Doc 9426), the Manual on Airspace Planning Methodology for the Determination of Separation Minima (Doc 9689), the Manual on Implementation of a 300 m (1 000 ft) Vertical Separation Minimum between FL 290 and FL 410 Inclusive (Doc 9574) and the Manual on Required Navigation Performance (RNP) (Doc 9613).~~

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CHAPTER 3. AIR TRAFFIC CONTROL SERVICE

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3.3 Operation of air traffic control service

3.3.3 **Recommendation.**— Air traffic control units should be equipped with devices that record background communication and the aural environment at air traffic controller work stations, capable of retaining the information recorded during at least the last twenty-four hours of operation.

Note.— Provisions related to the non-disclosure of recordings and transcripts of recordings from air traffic control units are contained in Annex 13, 5.12.

~~3.3.3~~3.3.4 Clearances issued by air traffic control units shall provide separation:

- a) between all flights in airspace Classes A and B;

...

Renumber subsequent paragraphs accordingly.

Insert the following as new Attachment E to Annex 11

ATTACHMENT E. ACCEPTABLE LEVEL OF SAFETY

1. Introduction

1.1 The introduction of the concept of acceptable level of safety responds to the need to complement the prevailing approach to the management of safety based upon regulatory compliance, with a performance based approach that aims for continuous improvement to the overall level of safety.

1.2 Acceptable level of safety expresses the safety goals of an oversight authority, an operator, or a services provider. From the perspective of the relationship between oversight authorities and operators/services providers, it provides the minimum safety objective(s) acceptable to the oversight authority to be achieved by the operators/services providers while conducting their core business functions. It is a reference against which the oversight authority can measure safety performance.

1.3 Establishing acceptable level(s) of safety for the safety programme does not replace legal, regulatory, or other established requirements, nor does it relieve States from their obligations regarding the Convention on International Civil Aviation and its related provisions.

1.4 Establishing acceptable level(s) of safety for the safety management system does not relieve operators/services providers from their obligations under relevant national regulations and the Convention on International Civil Aviation.

2. Scope

2.1 Within each State, different acceptable levels of safety may be established between the oversight authority and individual operators/services providers.

2.2 Each agreed established level of safety should be commensurate with the complexity of individual operator/service providers operational contexts, and the level to which safety deficiencies can be tolerated and realistically addressed.

3. Implementation

3.1 The concept of acceptable level of safety is expressed in terms of safety performance indicators and safety performance targets, and implemented through safety requirements.

3.2 The relationship between acceptable level of safety, safety performance indicators, safety performance targets and safety requirements is as follows: acceptable level of safety is the overarching concept; safety performance indicators are the measures or metrics to determine if the acceptable level of

safety has been achieved, safety performance targets are the quantified objectives pertinent to the acceptable level of safety, and safety requirements are the tools or means required to achieve the safety performance targets.

3.3 The safety performance indicators of an acceptable level of safety should be uncomplicated and linked to major components of a State safety programme, or an operator/services provider safety management system (SMS). They are generally expressed in numerical terms.

3.4 The safety performance targets of an acceptable level of safety should be determined after weighing what is desirable and what is realistic for individual operator/services providers. Safety performance targets should be measurable, acceptable to the parties involved, and consistent with the acceptable level of safety.

3.5 The safety requirements to achieve the safety performance targets of an acceptable level of safety should be expressed in terms of operational procedures, technology and systems, programmes, contingency arrangements and so forth, to which measures of reliability, availability and/or accuracy may be added.

3.6 An acceptable level of safety should be expressed by several safety performance indicators and translated into several safety performance targets, rather than by single ones.

— END —